



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1744-00

11 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 28 June 1960 for four years at age 18. The record reflects that you were advanced to SN (E-3) and served without incident for nearly a year. However, during the 24 month period from June 1961 to June 1963 you received four nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of drinking alcoholic beverages aboard the command, a brief period of unauthorized absence (UA) of nearly 24 hours, failure to go to your appointed place of duty, disobedience, possession of a dangerous weapon, and assault.

On 22 July 1964 you were convicted by general court-martial of possession of marijuana and a 58 day period of UA. You were sentenced to confinement at hard labor for two years, total forfeitures, reduction in rate to SR (E-1), and a bad conduct discharge. The Navy Board of Review affirmed the findings and the sentence on 29 October 1964. Thereafter, you waived the

right to request restoration to duty and requested that the bad conduct discharge be executed. On 10 March 1965 the clemency board reduced the confinement to 18 months. On 7 June 1965, you requested clemency but did not desire to be restored to duty. Clemency was denied and you received the bad conduct discharge on 30 July 1965.

In its review of your application the Board weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact you had nearly completed your enlistment when charges were referred to general court-martial. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given record of four NJPs and convictions by a summary and general court-martial. The Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review to determining if the sentence of the court-martial should be reduced as a matter of clemency. In other words, your claims of innocence, that you were found guilty on hearsay evidence, or mistakes of law were made, cannot be considered by the Board because that is the purpose of an appeal. Evidentiary and procedural matters were finally and conclusively adjudicated in the court-martial appellate process and furnish no basis for recharacterization of the discharge. The Board concluded that the conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director